Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Ameritech Michigan	)	CC Docket No. 97-1
Pursuant to Section 271 of the	)	
Communications Act of 1934,	)	
as amended, to Provide In-Region,	)	
InterLATA Services in Michigan	)	

ORDER

Adopted: February 7, 1997 **Released: February 7, 1997**

By the Commission:

I. INTRODUCTION

1. On February 3, 1997, the Association for Local Telecommunications Services (ALTS) filed in this docket a motion to strike Ameritech Michigan's (Ameritech) reliance upon what ALTS asserts is an unapproved arbitrated interconnection agreement between Ameritech and AT&T Communications of Michigan (AT&T).[1] Ameritech opposed the motion on February 5, 1997.[2] In addition, seven parties filed comments in support of the ALTS filing.[3] For the reasons discussed below, we grant the motion to strike. Accordingly, in evaluating Ameritech's pending application in this docket, we will not consider the document submitted in Volume 1.1 of Ameritech's January 17, 1997, amendment to its application, which Ameritech has characterized as the arbitrated interconnection agreement between Ameritech and AT&T Communications of Michigan.

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[1] Letter from Richard J. Metzger, General Counsel, ALTS, to Regina M. Keeney, Chief, Common Carrier Bureau, at 1 (Feb. 3, 1997) (ALTS Motion to Strike). On February 3, 1997, the Common Carrier Bureau released a Public Notice that established a procedural schedule for responses to the motion to strike. *ALTS Files Motion to Strike; Revised Comment Schedule*, Public Notice, DA 97-242 (rel. Feb. 3, 1997) (*February 3rd Public Notice*).

[2] Letter from John T. Lenahan, Ameritech, to Regina M. Keeney, Chief, Common Carrier Bureau, (Feb. 5, 1997) (Ameritech Response).

[3] The following parties submitted comments in support of ALTS's motion: United States Department of Justice (DOJ), AT&T Corp. (AT&T), Sprint Communications Company, L.P. (Sprint), Telecommunications Resellers Association (TRA), the Competitive Telecommunications Association (CompTel), WorldCom Inc. (WorldCom), MCI Communications Corporation (MCI).

II. BACKGROUND

2. On January 2, 1997, Ameritech filed with the Federal Communications Commission (Commission) an application to provide in-region, interLATA services in the State of Michigan, pursuant to section 271 of the Communications Act of 1934, as amended.[4] On the same day, the Common Carrier Bureau (Bureau) released a Public Notice that established a procedural schedule for the Ameritech application, based on the 90-day statutory review period allowed under section 271.[5] On January 17, 1997, Ameritech filed an amendment to its application (Amended Application) and requested that the Commission re-start the 90-day review period. The Bureau issued another Public Notice revising the procedural schedule adopted in the *January 2nd Public Notice* to treat effectively the Amended Application as a newly filed application so that the 90-day review period began on January 17, 1997, rather than on January 2, 1997.[6]

3. Section 271 contains several requirements that Ameritech and other Bell Operating Companies (BOCs) must meet before the Commission may approve their applications to provide in-region, interLATA services. A BOC seeking authorization based on specific binding interconnection agreements that have been approved under section 252 (i.e., agreements described in section 271(c)(1)(A)), must demonstrate: 1) that "with respect to access and interconnection provided pursuant to" such agreements, the BOC "has fully implemented the competitive checklist in subsection (c)(2)(B)";[7] 2) "the requested authorization will be carried out in accordance with the requirements of section 272"; and 3) "the requested authorization is consistent with the public interest, convenience and necessity."[8]

4. Ameritech represents in its Amended Application that interconnection agreements with three local exchange service providers, Brooks Fiber Communication of Michigan (Brooks Fiber), MFS Intelenet of Michigan (MFS), and TCG Detroit (TCG), satisfy

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4 47 U.S.C. § 271.

5 *See Comments Requested on Application by Ameritech Michigan for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Michigan*, Public Notice, DA 97-4 (rel. Jan. 2, 1997) (*January 2nd Public Notice*).

6 *See Revised Comment Schedule for Ameritech Michigan Application, as amended, for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Michigan*, Public Notice, DA 97-127 (rel. Jan. 17, 1997) (*January 17th Public Notice*). The *February 3rd Public Notice* issued in response to the instant ALTS motion further revised the procedural schedule for the Ameritech Amended Application, but only for the submission of comments by interested third parties in support of or in opposition to the Amended Application. *See February 3rd Public Notice* at 2.

7 47 U.S.C. § 271(d)(3)(A)(i).

8 *Id.* § 271(c)(2)(B).

the section 271(c)(1)(A) requirements.[9] Ameritech asserts that "[t]he Brooks Fiber, MFS and TCG Agreements 'include[] each of [the checklist items].'"[10] Ameritech also states that "as a result of painstaking negotiations . . . and an extensive arbitration before the MPSC, Ameritech has achieved a comprehensive interconnection agreement with the Michigan operating affiliate of AT&T" and that "[t]he AT&T agreement 'includes' and makes available to AT&T each of the checklist items."[11] Ameritech asserts that "the Brooks Fiber, MFS and TCG Agreements contain 'most favored nation' clauses ('MFN clauses')", and that "[p]ursuant to these MFN clauses in their Agreements, Brooks Fiber, MFS and TCG have available to them today all elements, products and services covered by the AT&T Agreement at the rates and on the terms and conditions specified in that Agreement."[12] Each of the MFN clauses relied on by Ameritech refers to the availability to the contracting parties of "arrangements upon the same rates, terms and conditions as those provided in" another "agreement . . . approved by the [Michigan Public Service] Commission pursuant to Section 252 of the Act."[13] Ameritech further contends that "[i]n the event the Commission were to conclude that the Brooks Fiber, MFS and TCG Agreements may only be used to satisfy the checklist requirements only as to those items actually furnished to those carriers, the AT&T Agreement 'fills the gap' . . . and completes Ameritech's checklist compliance."[14] Ameritech submitted with its Amended Application a document that it characterized as a state-approved arbitrated interconnection agreement between Ameritech and AT&T, filed with the Michigan Public Service Commission (Michigan Commission) on January 16, 1997 (January 16th Version). Ameritech maintains that "in all respects the January 16 version of the Agreement is the interconnection Agreement expressly approved by the [Michigan Commission] on November 26, 1996."[15] As explained in greater detail below, it is the January 16th Version that is the subject of ALTS's motion to strike.

5. The January 16th Version stemmed from an arbitration proceeding initiated by AT&T's filing of a petition for arbitration with the Michigan Commission on August 1, 1996.[16] On October 21, 1996, Ameritech and AT&T jointly submitted to an arbitration panel,

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[9] Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan at 10-16 (Jan. 2, 1997) (Ameritech Brief in Support).

[10] Ameritech Brief in Support at 10.

[11] *Id.*

[12] *Id.* (emphasis in original).

[13] *See* Brooks Fiber Agreement, § 28.15; MFS Agreement, § 28.14; TCG Agreement, § 29.13.1.

[14] Ameritech Brief in Support at 22 n.16.

[15] Ameritech Response at 3 (emphasis in original).

[16] *See* Ameritech Response at 1.

appointed by the Michigan Commission, a proposed agreement that contained: (a) contract language to which both parties agreed; and (b) language submitted by Ameritech and AT&T respectively that addressed disputed issues.[17] Various petitions and responses on the disputed issues were also before the panel. On October 28, 1996, the arbitration panel issued a decision identifying issues that the parties had been unable to resolve, ruling on each issue, and setting forth the rationale for its disposition of each issue.[18] It bears emphasis that the panel did not characterize its decision as an approval of an agreement between Ameritech and AT&T. Rather, the panel stated that its decision constituted a recommendation to the Michigan Commission that the Michigan Commission "approve the Interconnection Agreement which is to be subsequently submitted by Ameritech and AT&T in accordance with this Decision of the Arbitration Panel."[19]

6. On November 7, 1996, Ameritech filed with the Michigan Commission its objections to the arbitration panel's decision on the disputed issues. On the following day, AT&T filed its objections.[20] On November 26, 1996, the Michigan Commission rendered a decision in which it addressed all of the disputed issues raised by the parties' objections.[21] As to various issues, the Michigan Commission adopted the views of one party or the other. However, with respect to three issues, neither party's proposed language was ruled to be acceptable, and the Michigan Commission ordered the parties to submit proposals on the three issues within 30 days.[22] At that time the Michigan Commission stated that it was "approv[ing]" the "agreement," but, at the same time, it also ordered the parties to file a complete agreement within ten days.[23]

7. Since November 26, 1996, Ameritech and AT&T have separately filed with either the Michigan Commission or this Commission at least five different documents that the submitting party purported to be an "agreement" that conforms to the Michigan Commission's November 26th decision. Ameritech initially filed with the Michigan Commission on December 6, 1996, a document that it characterized as a "joint filing of Ameritech Michigan

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[17] *See AT&T Communications of Michigan, Inc.*, Case Nos. U-11151, U-11152, Proposal for Decision at 4 (Arbitration Panel Oct. 28, 1996) (*Arbitration Panel Decision*).

[18] *Id.*

[19] *Id.* at 81-82.

[20] *See AT&T Communications of Michigan, Inc.*, Case Nos. U-11151, U-11152, Order Approving Agreement Adopted by Arbitration at 3 (Mich. Pub. Serv. Comm'n Nov. 26, 1996) (*Michigan Commission Decision*).

[21] *Id.* at 4-29.

[22] *Id.* at 29-30.

[23] *Id.* at 30.

and AT&T."[24] Both AT&T and Ameritech, however, advised the Michigan Commission that various issues remained unresolved.[25] Ameritech then filed with the Michigan Commission on December 26th a document, which Ameritech again characterized as a joint submission of the "complete Interconnection Agreement between Ameritech Michigan and AT&T Communications of Michigan, Inc." (December 26th Version).[26] Although AT&T did not contend that Ameritech was not authorized to make the December 26th submission on behalf of AT&T, it subsequently advised the Michigan Commission that "[u]pon review of the document as submitted, AT&T has determined that what was filed by Ameritech" contained provisions that were in dispute between the parties as well as a "significant omission" of a pricing element.[27] On January 2, 1997, Ameritech filed with its initial section 271 application before this Commission a document that purportedly was an arbitrated agreement with AT&T approved by the Michigan Commission,[28] but that document differed from the December 26th Version.[29] For its part, AT&T filed a document with the Michigan Commission on January 14, 1997, that AT&T described as its interconnection agreement with Ameritech.[30] Ameritech then filed with the Michigan Commission the January 16th Version. Discrepancies between the December 26th and January 2nd versions of the agreement, among other things, caused Ameritech to submit its amended section 271 application to this Commission on January 17th, which included the January 16th Version.[31] Finally, on January 29, 1997, Ameritech filed

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[24] *See* Letter from Edward R. Becker, counsel for Ameritech, to Dorothy F. Wideman, Executive Secretary, Michigan Commission (Dec. 6, 1996); Letter from Arthur J. LeVasseur, counsel for AT&T, to Dorothy F. Wideman, Executive Secretary, Michigan Commission (Dec. 6, 1996).

[25] *Id.*

[26] *See* Letter from Edward R. Becker, counsel for Ameritech, to Dorothy Wideman, Executive Secretary, Michigan Commission (Dec. 26, 1996).

[27] Letter from Sidney M. Berman, counsel for AT&T, to Dorothy F. Wideman, Executive Secretary, Michigan Commission (Jan. 14, 1997). For example, AT&T claimed that the pricing schedule submitted by Ameritech did not conform to the Michigan Commission's November 26th order, and that it omitted shared transport pricing entirely. *Id.*

[28] Ameritech Brief in Support, at 20.

[29] *See* Ameritech Jan. 17 Letter to Federal Communications Commission at 2.

[30] *See* Letter from Sidney M. Berman, counsel for AT&T, to Dorothy F. Wideman, Executive Secretary, Michigan Commission (Jan. 14, 1997).

[31] *See* Ameritech Jan. 17 Letter to Federal Communications Commission at 2. We also note that on January 24, 1997, AT&T filed suit in Federal District Court pursuant to section 252(e)(6), arguing that several provisions of the AT&T arbitrated interconnection agreement fail to conform to the requirements of section 251 and the Commission's rules thereunder. Complaint of AT&T Communications of Michigan, Inc. v. Michigan Bell Telephone Co. et al. for Declaratory and Other Relief Under the Telecommunications Act of 1996, CA No. 97-60018 (E.D. Mich. Jan. 24, 1997). In the introduction to its complaint, AT&T recounted the chronology of events regarding the agreement, and stated: "Although it is unclear which, if

with the Michigan Commission what Ameritech claimed was a state-approved agreement that "supercedes" [sic] all agreements previously filed with the Michigan Commission (January 29th Version).[32] This is the first version of the "agreement" that has been executed by both parties.

8. We note that Ameritech has not withdrawn the January 16th Version nor has it asked this Commission to consider the January 29th Version for purposes of evaluating Ameritech's Amended Application.[33] Accordingly, we find that the January 16th Version is the "Volume 1.1: Interconnection Agreement Between AT&T and Ameritech" on which Ameritech is relying to show compliance with the competitive checklist.

III. PLEADINGS AND SUBMISSIONS

9. On February 3, 1997, ALTS filed a motion to strike Ameritech's reliance "upon an asserted '[Michigan Commission]-approved AT&T agreement'" for purposes of satisfying section 271.[34] Alternatively, ALTS asks that the Commission enter an order requiring Ameritech to show cause why such reliance should not be stricken from its application.[35] ALTS asserts that Ameritech is not legally entitled to rely on the January 16th Version, directly or indirectly, to demonstrate that it meets the requirements of section 271 for in-region interLATA entry, because the agreement has not been approved by the Michigan Commission and has been superseded by the January 29th Version.[36] According to ALTS, it is impossible for other parties to offer meaningful comments on any state-approved agreements that do not appear in the record, nor is there any feasible way in which the Commission could assess such comments.[37]

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any, of these documents constitutes an 'agreement' for purposes of the Act or this action, AT&T files this Complaint as a protective measure to preserve its right to seek review in this Court under the Act." *Id.* at 4.

[32] Letter from Edward R. Becker, counsel for Ameritech, to Dorothy F. Wideman, Executive Secretary, Michigan Commission (Jan. 29, 1997).

[33] We recognize that Ameritech has included the January 29th Version as Exhibit D to its Response to the ALTS motion, and that the exhibit has the same caption as the January 16th Version ("Volume 1.1: Interconnection Agreement Between AT&T and Ameritech"). Ameritech stated in its Response, however, that the January 29th Version was included "for comparison purposes." *See also* Letter from Lynn S. Starr, Executive Director, Federal Relations, Ameritech, to William F. Caton, Acting Secretary, Federal Communications Commission, at 1 (Feb. 6, 1997).

[34] ALTS Motion to Strike at 1, 4.

[35] *Id.*

[36] *Id.* at 3.

[37] *Id.* at 3-4.

10. Except for Ameritech, all of the other parties commenting on ALTS's motion to strike urge the Commission to grant the motion. Most of these parties concur with ALTS's claim that the AT&T interconnection agreement filed in this docket has not been approved by the Michigan Commission, and has been superseded by the January 29th Version.[38] In addition, several parties contend that Ameritech's repeated filing of superseding versions of the AT&T agreement has rendered the Ameritech application a "moving target," inhibiting their ability to assess Ameritech's application, contrary to the Commission's requirement that a BOC application under Section 271 be complete on the date it is filed.[39] These parties argue that, in light of the strict statutory deadline of 90 days for a Commission decision on a section 271 application, the "completeness" requirement is essential to afford interested parties, state commissions, and the Department of Justice a meaningful opportunity to comment on an application, and for the Commission to evaluate a large, complex record.[40]

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[38] Response of the United States Department of Justice to Motion by ALTS to Strike Ameritech's Reliance on an Agreement with AT&T From its Michigan Application, at 3 (Feb. 5, 1997) (DOJ Response); Comments of the Telecommunications Resellers Association, at 4-6 (Feb. 5, 1997) (arguing that "it is not at all clear that this latest [January 28th] rendition of the AT&T/Michigan interconnection Agreement has been or will be approved by the MPSC," and further that the January 16th Version, "which having itself superseded its predecessor, has now itself been superseded") (TRA Comments); Comments of WorldCom, Inc., on ALTS Motion to Strike, at 2 n.4 (Feb. 5, 1997) (citing 47 U.S.C. § 252(e)(4)) (WorldCom Comments); Letter from Danny E. Adams, Counsel, Competitive Telecommunications Association, to Regina M. Keeney, Chief, Common Carrier Bureau, at 1-2 (Feb. 5, 1997) (claiming that Ameritech's characterization of the AT&T agreement as approved is "erroneous because the contract has only recently been submitted to the MPSC for review") (CompTel Response); Comments of Sprint Communications Company, L.P., at 3-4 (Feb. 5, 1997) (noting that, in filing the January 29th Version with the Michigan Commission, Ameritech stated that that agreement "'supersedes' all prior agreements") (Sprint Comments).

[39] WorldCom Comments at 3 (arguing that Ameritech is wasting the limited resources of the Commission and interested parties "by filing a 'moving target' that is destined to be rejected because on its face it is incomplete."). *See also* DOJ Response at 3; MCI Letter from Jonathan B. Sallet, Chief Policy Counsel, MCI Communications Corporation, to Regina M. Keeney, Chief, Common Carrier Bureau, at 2 (Feb. 5, 1997) ("Third parties scrambling to respond in 20 days to Ameritech's voluminous submission (which it could leisurely prepare over a period of weeks or months) should not have to deal with a moving target; nor should the Commission's review period be artificially shortened by amendments to BOC applications."); and Letter from Mark C. Rosenblum, Vice President -- Law & Public Policy, AT&T Corp., to Regina M. Keeney, Chief, Common Carrier Bureau, at 1-2 (Feb. 5, 1997) ("[T]the Act (and common sense) plainly contemplate, at a minimum, that any application under Section 271 be based on a factual record that is complete and final . . . events in this case have not satisfied even this threshold standard.").

[40] WorldCom Comments at 3. *See also* DOJ Response at 4 ("It is essential to fair and orderly review of applications under Section 271 that all commenters review the same basic facts."); CompTel Response at 2 (failure to grant ALTS's motion "will represent a departure from the Commission's strict standards of completeness for Section 271 applications, instead creating a standard that will lead to administrative chaos in the processing of this and subsequent applications"); TRA Comments at 7 (the commitment by applicants to "confirm the accuracy and completeness of their applications is critical to the Commission's ability to engage in reasoned decision-making . . .. And just as Commission analysis would be hindered by incomplete, inaccurate or stale data, so to [sic] would the right of the industry and consuming public to participate in the Commission's decisional processes be seriously undermined").

11. Several of the parties supporting ALTS's motion encourage the Commission to take further action, beyond simply granting the motion, to ensure that Ameritech does not, whether through intentional or inadvertent action, subvert the section 271 application review process. The additional relief requested ranges from restarting the 90-day review process[41] to dismissing Ameritech's application with prejudice, precluding Ameritech from refiling its application until April 17, 1997, 90 days after the January 17 filing date.[42]

12. On February 5, 1997, Ameritech filed a response to ALTS's motion to strike. In its response, Ameritech argues that: 1) the January 16th Version in fact has been approved by the Michigan Commission; and 2) the January 16th Version has not been superseded by the January 29th Version.[43] As to the first point, Ameritech contends that the Michigan Commission in its November 26, 1996 Order approved the AT&T interconnection agreement as adopted by the arbitration panel and as modified by the Michigan Commission in its Order, except with respect to certain outstanding issues which the parties were directed to resolve and incorporate into their otherwise approved agreement.[44] Ameritech contends that the January 16th Version incorporates provisions resolving the outstanding issues identified in the November 26, 1996 Order.[45] Ameritech therefore contends that the January 16th Version "is

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[41] DOJ Response at 4-5 ("the Commission should obtain clarification as to which version of the AT&T agreement, if any, has been approved by the MPSC, and should re-start the 90-day review process after obtaining such clarification in order to afford all parties an adequate opportunity to review and comment on the application").

[42] WorldCom Comments at 4-5. WorldCom asserts that, because Ameritech's application relies on an unsigned, unapproved agreement, the Commission should promptly dismiss Ameritech's application with prejudice to Ameritech refiling its application until the 90 day clock has run. *Id.* at 4-5. In the alternative, WorldCom asks the Commission to strike that portion of Ameritech's application that relies on any version of the AT&T agreement, and to make clear that, if Ameritech withdraws its application, it does so with prejudice to refiling before April 17, 1997. *Id.* at 5. *See also* CompTel Response at 3 (urging the Commission to declare that, "when a Section 271 application is filed in an acceptable form it cannot be withdrawn and refiled until the 90-day window on the original filing has elapsed"); Sprint Comments at 4-5 (urging the Commission to dismiss summarily Ameritech's application on the ground that, without the AT&T agreement, Ameritech cannot satisfy the competitive checklist); MCI Response at 2 ("the Commission should inform Ameritech that it can either withdraw its application or, with the newest AT&T agreement, restart the clock"); TRA Comments at 8. TRA urges the Commission to consider imposing sanctions on Ameritech if it finds that errors in Ameritech's application were due to more than mere inadvertence. *Id.* TRA asserts that, absent such a determination, Ameritech should be allowed to prosecute its application without the AT&T agreement or, alternatively, to withdraw the application and not to refile until it has confirmed the application's accuracy and completeness. *Id.*

[43] Ameritech Response at 1.

[44] *Id.* at 3, paras. 5-7.

[45] *Id.* at 3. The unresolved issues related to: indemnification, limitation of liability, and performance standards. *Id.* at para. 6. In addition, according to Ameritech, the Michigan Commission ordered in its November 26 Order that certain rates to be determined in then-pending cases should be incorporated in the

the interconnection Agreement expressly approved by the [Michigan Commission] on November 26, 1996."[46]

13. With respect to its second point that the January 29th Version does not supersede the January 16th Version, Ameritech contends that there is no material difference between the January 16th Version and the January 29th Version.[47] While acknowledging that it stated in its cover letter to the Michigan Commission that the January 29th Version "supersedes" previously filed versions,[48] Ameritech maintains that the January 16th Version and January 29th Versions "are identical."[49] Therefore, according to Ameritech, ALTS' assertion that the two agreements are different and that the second supersedes the first is "frivolous."[50]

14. On February 6, 1996, the Michigan Commission submitted a written consultation on Ameritech's Amended Application.[51] In that submission, the Michigan Commission addressed the issue of the various versions of the AT&T arbitrated interconnection agreement. The Michigan Commission stated:

> In the case of the AT&T agreement, five versions of that interconnection agreement have now been filed with the MPSC. Four were filed by Ameritech Michigan on December 6, 1996, December 26, 1996, January 16, 1997 and January 29, 1997. AT&T also filed a contract on January 14, 1997. Each party represents that each submitted version of the interconnection agreement complies with the MPSC's order in its arbitration case. The January 29, 1997, version of the interconnection agreement has been signed by both parties.

AT&T interconnection agreement when those cases were concluded. *Id.* at para. 7 (*citing* November 26, 1996 Order at 8).

[46] *Id.* (emphasis in original).

[47] Ameritech contends that the changes between the January 16th Version and the January 29th Version were limited to removing the rates for unbundled local switching ports from the unbundled local switching section of the pricing schedule and placing those same rates in a separate section of the schedule, which AT&T entitled "Michigan ports." Ameritech Response at 5. Ameritech maintains that this change (which it claims is the only change) makes no difference at all because the definition of "Michigan ports" is the same as the definition for unbundled local switching ports contained in the AT&T interconnection agreement. *Id.*

[48] *Id.* at 4. Ameritech states that the January 29th cover letter statement "may have been a poor choice of words." *Id.*

[49] *Id.* (emphasis in original).

[50] *Id.* at 5.

[51] Comments of the Michigan Public Service Commission, pp. 4-5 (Feb. 6, 1997) (Michigan Commission Comments).

> However, disputed language still appears in the rate schedules. Regardless of the representations in the cover letters, no determination has been made by the [Michigan Commission] as to which, if any, of the [five] contract versions complies with the [Michigan Commission] order in the AT&T/Ameritech Michigan arbitration case.[52]

IV. DISCUSSION

15. We grant ALTS's motion to strike because we find that the January 16th Version, the only version of the AT&T/Ameritech "agreement" included in Ameritech's Amended Application, had not been approved by the Michigan Commission as of January 17, 1997, the date Ameritech filed the instant Amended Application. Indeed, since the Michigan Commission has stated explicitly that it has made "no determination. . . as to which, if any, of the [five] contract versions complies" with its order in the arbitration proceeding, the Michigan Commission plainly had not approved the January 16th Version as of the date Ameritech filed its Amended Application. The Michigan Commission's statement also effectively disposes of Ameritech's contention that the January 16th Version has been approved by the Michigan Commission because, according to Ameritech, that document conforms to the Commission's November 26th Order. The Michigan Commission's statement makes clear that it has not held that the January 16th Version, or any other version, complies with its Order. Ameritech, therefore, may not rely on the January 16th Version in its Amended Application to satisfy the competitive checklist in Michigan. We further note that the January 16th Version was neither signed by either party nor dated and, thus, does not appear to be a legally binding contract. As such, Ameritech may not be able to rely indirectly on the January 16th Version through the MFN clauses contained in its interconnection agreements with Brooks Fiber, MFS, and TCG.[53]

16. Section 252 sets forth a three-stage process for the approval of arbitrated agreements. First, section 252(b) requires that, within nine months of the original request for interconnection, the state commission shall arbitrate all disputed issues related to the

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[52] *Id.* at 4-5.

[53] We also note that the TCG-Ameritech agreement included in the Amended Application is not signed by TCG. In its consultation, the Michigan Commission states that Ameritech and TCG did not jointly submit within ten days an agreement that complies with the Michigan Commission's November 1, 1996 arbitration decision, as required by that decision. *Id.* at 4. On November 14, 1996, TCG objected to the interconnection agreement submitted to the Michigan Commission by Ameritech. *Id. See also* Letter from Stephen J. Videto, counsel for TCG, to Dorothy Wideman, Executive Secretary, Michigan Commission (Nov. 14, 1996). Because neither the ALTS motion nor the comments address the status of the TCG agreement, we make no finding in this Order regarding Ameritech's ability to rely on the TCG agreement to satisfy section 271.

agreement.[54] Second, section 252(e) contemplates that, from the results of the arbitration, the parties shall create a joint document that reflects those results, and then submit the document to the state commission for final approval.[55] Third, section 252(e)(1) requires the state commission to approve or reject the agreement.[56] If the state commission does not act within 30 days after the parties' submission, the agreement is deemed approved.[57] Under this statutory procedure, if disputes between the parties arise following the arbitration regarding the conformity of any submissions to the arbitration rulings, the state commission is obliged to resolve those disputes before giving final approval. This procedure ensures that disputes about the proper interpretation of the arbitration decision will not prolong implementation of arbitrated agreements, and thus forestall the development of local exchange competition.

17. We find that neither the January 16th Version nor any other version (including the January 29th Version) has been approved by the Michigan Commission consistent with the procedures outlined above. The November 26th arbitration decision, as the Michigan Commission recognized by its acknowledgement that no "complete" agreement yet existed,[58] did not give final approval to a complete agreement between Ameritech and AT&T.[59] The Michigan Commission further stated in its written consultation, that "no determination has been made by the [Michigan Commission] as to which, if any, of the [five] contract versions complies with the [Michigan Commission] order in the AT&T/Ameritech Michigan arbitration case."[60] We thus agree with the Department of Justice that, because a complete agreement that reflected the resolution of disputed issues by the arbitration panel and the Michigan Commission was not before the Michigan Commission, "there is no specific document that can be identified as having been 'approved' [on November 26, 1996]."[61] Section 252(e)

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[54] 47 U.S.C. § 252(b)(4)(C) ("The State commission . . . shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request [for interconnection] under this section.").

[55] *See id.* § 252(e)(1) ("Any interconnection agreement adopted by . . . arbitration shall be submitted for approval to the State commission."); *id.* § 252(e)(4) (referring to the foregoing submission as a "submission *by the parties*") (emphasis added).

[56] *Id.* § 252(e)(1).

[57] *Id.* § 252(e)(4) ("If the State commission does not act to approve or reject the agreement . . . within 30 days after submission by the parties of an agreement adopted by arbitration . . ., the agreement shall be deemed approved.").

[58] *Michigan Commission Decision* at 30.

[59] *Michigan Commission Decision* at 30.

[60] Michigan Commission Comments at 5.

[61] DOJ Response at 3. *See also* WorldCom Comments at 2 n.4 ("It is not reasonable, . . . nor consistent with the Act's review provisions, to deem an agreement officially approved before it has even been filed.")

requires final approval of a complete arbitrated agreement that conforms to the state commission's arbitration decision.[62]

18. Following the Michigan Commission's November 26th decision, the first version of an agreement between Ameritech and AT&T was filed by the parties with the Michigan Commission on December 6, 1996. But neither this version nor any subsequent version of the agreement has been under state commission review for 30 days without being superseded by the filing of a new version by one of the parties or contested as not being a joint submission conforming to the Michigan Commission's November 26th decision. Accordingly, we find that neither the January 16th Version nor any of the other versions of the AT&T arbitrated interconnection agreement is deemed approved pursuant to section 252(e)(4).

19. The purpose of the third stage of the section 252 approval procedure is to allow the parties to raise with the state commission any disputes regarding the conformity of any proposed agreements to the arbitration rulings, and to enable the state commission to resolve such disputes before final approval of an agreement is granted. Any other understanding of the section 252 approval procedure would create considerable and unnecessary difficulties for purposes of the section 271 review process. Because of the strict 90-day statutory review period, the section 271 review process is keenly dependent on both final approval of a binding agreement pursuant to section 252 as well as an applicant's submission of a complete application at the commencement of a section 271 proceeding.[63] We agree with WorldCom that "completeness is essential in order to permit interested parties, state commissions, and the Department of Justice a realistic opportunity to comment, and for the FCC to evaluate, an enormous and complex record in a short period of time."[64] Allowing parties continually to file different versions of unsigned interconnection agreements -- and to litigate before this Commission the approval status of various versions -- would impair the ability of the state commission and of the Attorney General to meet their respective statutory

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62 47 U.S.C. § 252(e).

63 In fact, in our December 6, 1996 Public Notice establishing procedural requirements that apply to the processing of section 271 applications, we stated: "We expect that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon. In the event that the applicant submits (in replies or ex parte filings) factual evidence that changes its application in a material respect, the Commission reserves the right to deem such submission a new application and start the 90-day review process anew." *Procedures for Bell Operating Company Applications under New Section 271 of the Communications Act*, Public Notice, FCC 96-469 at 2 (rel. Dec. 6, 1996) (*December 6th Public Notice*).

64 WorldCom Comments at 3. *See also* CompTel Response at 2 ("The statutory requirement for 90-day consideration of requests under Section 271 simply is too demanding for anything less than a fully 'complete upon filing' standard.").

consultative obligations.[65] In addition, it would undermine this Commission's ability to render a decision within the 90-day statutory timeframe. As TRA notes, "reasoned decision-making is obviously undermined if agency actions are predicated on flaws or deficient records."[66] Moreover, such a practice, if condoned, would be unfair to interested third parties seeking to comment on a fixed record triggered by the date that a section 271 application is filed.[67] Finally, such uncertainty undermines the ability of third parties to take advantage of interconnection agreements pursuant to section 252(i).[68]

20. Thus, we grant the motion to strike, and shall not consider the January 16th Version in deciding whether Ameritech has satisfied the competitive checklist in Michigan. In reaching this decision, we express no view as to whether Ameritech's application, absent the January 16th Version, satisfies the statutory criteria for Ameritech's provision of in-region, interLATA services in the State of Michigan.

21. As a consequence of our decision to grant the motion to strike the January 16th Version, however, we believe there is some uncertainty as to whether Ameritech alleges that it meets the statutory checklist requirements without reliance on the AT&T arbitrated agreement, and therefore whether Ameritech intends to prosecute its section 271 application on the basis of the MFS, Brooks Fiber, and TCG agreements alone. To ensure this proceeding can go forward in an orderly fashion, we hereby order Ameritech to clarify this uncertainty in a submission to be filed with this Commission no later than Tuesday, February 11, 1997. Specifically, no later than Tuesday, February 11, 1997, Ameritech is ordered either to: 1) state that it intends to continue to prosecute its application, without any version of the AT&T arbitrated agreement; or 2) withdraw its application. We also note that should Ameritech choose the first option, we expect that Ameritech will prosecute its application until such time as the Commission renders its decision. If, instead, Ameritech chooses the first option but then subsequently withdraws the application, we will consider in that event

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[65] *See* 47 U.S.C. § 271(d)(2). *See also* DOJ Response at 3 ("In light of the confusion concerning which agreement, if any, has been approved by the MPSC, and the resultant uncertainty about the manner in which Ameritech will comply with the competitive checklist requirements of Section 271, the Department of Justice, other parties, and the Commission itself will have great difficulty in properly assessing Ameritech's application.")

[66] TRA Comments at 7.

[67] *See* TRA Comments at 7 ("And just as Commission analysis would be hindered by incomplete, inaccurate or stale data, so to [sic] would the right of the industry and the consuming public to participate in the Commission's decisional processes be seriously undermined."). *See also* DOJ Response at 4; WorldCom at 3; CompTel Response at 2. We note that the procedures we have established for BOC applications under section 271 require an applicant to identify the date on which all interconnection agreements that the applicant has entered into were approved. *December 6th Public Notice* at 2-3.

[68] 47 U.S.C. § 252(i). *See also* 47 U.S.C. § 252(h) (state commission shall make a copy of each agreement or statement approved available for public inspection within 10 days of approval).

whether any Commission action is warranted.[69] Similarly, if Ameritech amends or supplements its application to add an approved AT&T arbitrated agreement or any other approved agreement, we intend to strike any such amendment or supplement. These measures are necessary to ensure that Commission proceedings are conducted in "such manner as will best conduce to the proper dispatch of business and to the ends of justice."[70] Given the tight statutory timeframe for the Commission's decision, these requirements are necessary to ensure that all commenting parties have an opportunity to evaluate the complete application, and thereby facilitate development of a complete record.

22. While our decision today rests entirely upon the evidence that the Michigan Commission has not approved any final agreement between AT&T and Ameritech, we believe it is necessary to articulate further the steps a Bell Company must take in its initial application to establish a prima facie case that any agreements on which it seeks to rely -- whether section 271(c)(1)(A) agreements or other agreements whose terms are imputed into a section 271(c)(1)(A) agreement through operation of a "most favored nation" clause -- are "binding agreements that have been approved under section 252." When we established our procedures that govern section 271 determinations, we said that "[w]e expect that a section 271 application, *as originally filed*, will include *all of the factual evidence* on which the applicant would have the Commission rely in making its findings thereon."[71] At a minimum, we believe that when a Bell Company files a 271 application asserting compliance with section 271(c)(1)(A), the Bell Company must submit facts that demonstrate that, as of the date of filing, the Bell Company has entered into "binding" and "approved" agreements to provide each and every checklist item in the relevant state. This necessarily presupposes that agreements have been executed by the respective parties and subsequently approved by the relevant State Commission. An application, however, that is based on unexecuted draft agreements makes it difficult for the Commission to determine whether an agreement has been reached, which draft of the agreement is the basis on which the Commission should determine checklist compliance, whether the agreement is binding on the applicant, and whether the requesting carrier is able to use such agreement to obtain interconnection as a matter of right.

23. We take this opportunity to make clear that, consistent with our December 6, 1996 Public Notice, any application asserting compliance with section 271(c)(1)(A) must be supported as of the date that the section 271 application is filed by either: 1) an agreement executed by both parties and approved by the State Commission, either explicitly and affirmatively or by operation of law; or 2) an order from the State Commission clearly and unambiguously approving the specific and complete text of the agreement upon which the applicant seeks to rely, and proof that the applicant regards such agreement as binding on the

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[69] *See* 47 C.F.R. § 1.52.

[70] 47 U.S.C. § 154(j).

[71] *December 6th Public Notice* at 2 (emphasis added).

applicant for any and all purposes. Any other agreements that an applicant seeks to incorporate into a section 271(c)(1)(A) agreement through operation of a "most favored nation" clause shall satisfy the same requirements. Finally, we remind applicants of their obligation under our rules to maintain "the continuing accuracy and completeness of information" furnished to the Commission.[72] It is essential that our decision on a section 271 application be based on an accurate current record.

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 252, 271 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 252, 271, the motion to strike filed by the Association for Local Telecommunications Services on February 3, 1997, IS GRANTED to the extent indicated herein.

25. IT IS FURTHER ORDERED that the arbitrated interconnection agreement between Ameritech Michigan and AT&T Communications of Michigan, contained in Ameritech Michigan's Amended Application and filed with this Commission on January 17, 1997, SHALL NOT BE CONSIDERED for purposes of determining whether the Ameritech Michigan Amended Application satisfies the competitive checklist set forth at 47 U.S.C. § 271(c)(2)(B).

26. IT IS FURTHER ORDERED THAT Ameritech Michigan, no later than Tuesday, February 11, 1997, shall either: 1) state in a submission to be filed with this Commission that it intends to continue to prosecute its application, without any version of the AT&T arbitrated agreement; or 2) withdraw its pending application for authorization to provide in-region, interLATA services in the State of Michigan, pursuant to section 271 of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[72] 47 C.F.R. § 1.65(a).